

Serial No.: 09/993,320

Filing Date: November 19, 2001

Attorney Docket No. 100.290US01

Title: RESILIENT BOOT PROM LOADER

Amendment to the Drawings

The attached sheet of drawings includes changes to Figure 2A. This sheet replaces the original sheet including Fig. 2A. Applicant has proposed an amendment to Figure 2A. In particular, Applicant proposes addition of suitable descriptive legends in Figure 2A. Applicant submits that no new matter is incorporated by these clerical corrections. Applicant thus respectfully requests that the Examiner approve the proposed changes to Figure 2A as noted in the attached red-lined drawings. Formal drawings will be submitted upon the Examiner's approval of the proposed changes to Figure 2A.

A new Figure 3 is included in response to a rejection by the Examiner.

Attachments: Replacement sheet of Figure 2A and new Figure 3.

Annotated sheet showing changes to Figure 2A

REMARKS

Applicant has reviewed the Office Action mailed on March 22, 2005 as well as the art cited. Claims 1, 13, 15-18, 20, 27, 32, 34, 69, 75, and 81 have been amended. Claims 41- 50 and 41-68 have been cancelled without prejudice or disclaimer. Applicant reserves the right to reintroduce these claims in a future continuing application. As a result, claims 1-40 and 69-81 are currently pending in this application.

Drawings

In paragraph 4, the Examiner objected to the drawings asserting that suitable descriptive legends had not been used for understanding of the drawings especially figure 2A. Applicant has provided an amended Figure 2A that includes descriptive legends, herewith, to alleviate this objection. Applicant respectfully asserts that the amended Figure 2A as presented does not introduce additional new matter. As a result, Applicant respectfully requests withdrawal of this objection.

In paragraph 5, the Examiner objected to the drawings under 37 CFR 1.83(a) asserting that they fail to show every feature of the invention specified in the claims. In particular, the Examiner requests that the sending and receiving a device ID, selecting firmware at a device, and downloading firmware to another device must be shown or the feature(s) canceled from the claim(s). Applicant has provided a proposed new Figure 3, herewith, to fulfill this requirement. Applicant respectfully asserts that incorporation of Figure 3 does not introduce new matter. As a result, Applicant respectfully requests withdrawal of this objection.

Claim Objections

Claims 13-18, 43, 45, and 46 were objected to because of the informalities listed in paragraph 6 of the Office Action dated March 22, 2005. Claims 43, 45 and 46 have been cancelled and claims 13-18 have been amended to correct the informalities cited by the Examiner, as indicated by the amended claims provided above. As a result, Applicant respectfully asserts that claims 13-18 are now in condition for allowance.

Rejections Under 35 U.S.C. § 102

Claims 13, 15, 17-19, 27-29, 32, 41-44, 48, 50, 63-65, 67, 75-77 and 79-80 were rejected under 35 USC § 102(e) as being anticipated by Ha, (U.S. Patent No. 6,175,919).

Claims 13, 27, and 75 have been amended to further define the patentable subject matter. No new matter has been added. Claims 41-44, 48, 50 and 63-65, and 67 have been cancelled as a result, the rejections to these claims is now moot.

Claims 13, 15, 17-18

Claim 13, as amended, is directed to a method of operating a communication management device. The method includes initializing one or more associated communication devices from routines stored on a boot PROM of each of the one or more associated communication devices, receiving a device ID from each of the one or more associated communication devices to determine whether any of the one or more associated communication devices require a firmware upgrade, initiating a firmware upgrade without an administrator based on the device ID of each of the one or more communication devices, selecting a software program associated with the device ID of each of the one or more associated communication devices and downloading the software program associated with the device ID to each of the one or more associated communication devices that require a firmware upgrade.

Ha does not teach or suggest the method of claim 13. In particular, Ha does not teach or suggest initiating a firmware upgrade without an administrator based on the device ID of each of the one or more communication devices as found in claim 13, but in contrast discusses that “[A] user upgrades the BIOS of the computer system using an operating system . . . by inserting a floppy disk into a floppy drive” (Col. 3, lines 42-46) and “for upgrading the BIOS, many floppy disks have to be loaded . . . and a user should input a command using a keyboard and operate it when driving the BIOS upgrade software.” (Col. 3, line 65 – Col. 4, line 2) The method of claim 13 includes receiving a device ID from each of the one or more associated communication devices and initiating a firmware upgrade without an administrator (based on the device ID of each of the one or more communication devices). Therefore, Ha does not teach or suggest the method of claim 13 and claim 13 should be allowed.

Claims 15, 17, 18, and 19 depend directly or indirectly from claim 13 and, as such, include the patentable limitations of claim 13 and should also be allowed. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) and allowance of claims 13, 15, 17, 18 and 19. In addition, since the Applicant believes these dependant claims are allowable for the above reasons, responses to all rejection of these claims may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Further, claim 19 includes updating a store of firmware at the communications management device. The Examiner admits that Ha does not discuss that the store of firmware at the communications management device would need to be updated as found in claim 19. The Applicant respectfully contends that the basis for citing Ha in rejecting claim 19 under 35 U.S.C. §102(e) is unfounded. The Examiner's argument that "if the store of firmware in Ha were not updated the management device of Ha would only be able to perform an update only once and this is not suggested in Ha" is a conclusory statement based on hindsight reasoning. Using a prior art reference without the requisite suggestion, teaching, or motivation impermissibly takes the inventor's disclosure as a blueprint for piecing together prior art to defeat patentability - the essence of hindsight. *See, e.g., Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985). Here the rejection is impermissibly based on the inventor's own disclosure. As a result, claim 19 is allowable.

Claims 27, 28, 29 and 32

Claim 27, as amended, is directed to a method of invoking a communication system. The method includes initializing one or more communication devices from routines stored on a boot PROM of each of the one or more communication devices, receiving a device ID from each of the one or more communication devices at a management device, initiating a firmware upgrade without an administrator based on the device ID of each of the one or more communication devices, selecting a software program associated with the device ID of each of the one or more communication devices that require a firmware upgrade, and downloading the software program

associated with the device ID to each of the one or more communication devices that require a firmware upgrade.

Ha does not teach or suggest the method of claim 27. In particular, Ha does not teach or suggest initiating a firmware upgrade without an administrator based on the device ID of each of the one or more communication devices as discussed above with respect to claim 13. Applicant refers the Examiner to the arguments presented above for claim 13. Therefore, Ha does not teach or suggest the method of claim 27 and claim 27 should be allowed.

Claims 28, 29 and 32 depend either directly or indirectly from allowable claim 27 and as such are also allowable. In addition, since the Applicant believes claim 29 is allowable for the above reasons, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Further, claim 28 includes the limitation storing the downloaded software program into a RAM memory of each of the one or more communication devices. The Examiner admits that Ha does not specifically discuss storing the downloaded software program into a RAM memory. The Applicant respectfully contends that the basis for citing Ha in rejecting claim 28 under 35 U.S.C. §102(e) is unfounded. The Examiner's argument that "This memory is interpreted to be RAM memory because it is not the BIOS ROM, no mention of using the system ROM 11 is suggested" is a conclusory statement based on hindsight reasoning. Using a prior art reference without the requisite suggestion, teaching, or motivation impermissibly takes the inventor's disclosure as a blueprint for piecing together prior art to defeat patentability - the essence of hindsight. *See, e.g., Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985). Here the rejection is impermissibly based on the inventor's own disclosure. As a result, claim 28 is allowable.

Claim 32 further includes updating a repository of software programs stored on the management device. The Examiner admits that Ha does not discuss the store of firmware at the communications management device. The Applicant respectfully contends that the basis for citing Ha in rejecting claim 32 under 35 U.S.C. §102(e) is unfounded. The Examiner's argument that "if the store of firmware in Ha were not updated the management device of Ha would only

be able to perform an update only once and this is not suggested in Ha” is a conclusory statement based on hindsight reasoning. Using a prior art reference without the requisite suggestion, teaching, or motivation impermissibly takes the inventor's disclosure as a blueprint for piecing together prior art to defeat patentability - the essence of hindsight. *See, e.g., Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985). Here the rejection is impermissibly based on the inventor's own disclosure. As a result, claim 32 is allowable.

Claims 75, 76, 80

Claim 75, as amended, is directed to a machine-usable medium having machine-readable instructions stored thereon for execution by a processor of a telecommunications management device to perform a method. The method includes initializing one or more associated telecommunication devices from routines stored on a boot PROM, receiving a device ID from each of one or more associated telecommunication devices, initiating a firmware upgrade without an administrator based on the device ID of each of the one or more associated telecommunication devices, selecting a firmware program associated with the device ID of each of one or more telecommunication devices that require a firmware upgrade, and downloading the firmware program associated with the device ID to each of one or more telecommunication devices that require a firmware upgrade.

Ha does not teach or suggest the method of claim 75. In particular, Ha does not teach or suggest initiating a firmware upgrade without an administrator based on the device ID of each of the one or more associated telecommunication devices as found in claim 75 and discussed above in claims 13 and 27. Applicant refers the Examiner to the arguments presented above with respect to claims 13 and 27. Therefore, Ha does not teach or suggest the method of claim 75 and claim 75 should be allowed.

Claims 76, 77, 79 and 80 depend from and further define allowable claim 75 and are allowable for at least the reasons stated above. In addition, since the Applicant believes claims 76, 77, 79 and 80 are allowable for the above reasons. Responses to all rejections may not have

been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Further, claim 77 includes updating a repository of firmware stored on the telecommunication management device. The Examiner admits that Ha does not discuss the store of firmware at the telecommunications management device would need to be updated as found in claim 77 and discussed above in claims 19 and 32. Applicant refers the Examiner to the arguments presented above with respect to claims 19 and 32. Therefore, Ha does not teach or suggest the method of claim 77 and claim 77 should be allowed.

Further, claim 79 includes storing the downloaded firmware into a RAM memory of each of the one or more telecommunication devices. The Examiner admits that Ha does not specifically discuss storing the downloaded firmware into a RAM memory. The Applicant respectfully contends that the basis for citing Ha in rejecting claim 79 under 35 U.S.C. §102(e) is unfounded. The Examiner's argument that "This memory is interpreted to be RAM memory because it is not the BIOS ROM, no mention of using the system ROM 11 is suggested" is a conclusory statement based on hindsight reasoning. Using a prior art reference without the requisite suggestion, teaching, or motivation impermissibly takes the inventor's disclosure as a blueprint for piecing together prior art to defeat patentability - the essence of hindsight. See, e.g., *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985). Here the rejection is impermissibly based on the inventor's own disclosure. As a result, claim 79 is allowable.

Rejections Under 35 U.S.C. § 103

Claims 33, 45-47 and 78 were rejected under 35 USC § 103(a) as being unpatentable over Ha. Applicant respectfully asserts that these rejections are now moot as claims 45-47 are cancelled and the claims from which claims 33 and 78 depend are allowable.

Claim 33

Claim 33 depends indirectly from claim 27 and includes the patentable limitations of claim 27. Applicant refers the Examiner to the arguments presented above with respect to claim 27. As a result, claim 33 is allowable. In addition, since the Applicant believes claim 33 is

allowable for the above reason, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claim 78

Claim 78 depends indirectly from claim 75 and includes the patentable limitations of claim 75. Applicant refers the Examiner to the arguments presented above with respect to claim 75. As a result, claim 78 is allowable. In addition, since the Applicant believes claim 78 is allowable for the above reason, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claims 1-5, 7, 10, 12, 16, 30, 69-73 and 81 were rejected under 35 USC § 103(a) as being unpatentable over Ha in view of Itoh (U.S. Patent 6,795,912). Applicant respectfully traverses this rejection. Claims 1, 69, and 81 have been amended to further define their respective methods. Applicant asserts that as amended claims 1, 69 and 81 are allowable.

Claim 16 depends from allowable claim 13 and includes the patentable limitations of claim 13 and should also be allowed. Claim 30 depends from allowable claim 27 and includes the patentable limitations of claim 30 and should also be allowed. In addition, since the Applicant believes claims 16 and 30 are allowable for the above provided reasons, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claims 1-5, 7, 10, 12

Claim 1, as amended, is directed to a method of operating a communication device with a boot PROM. The method includes initializing the communication device from routines stored on the boot PROM, reading a device ID indicating a model and revision from the communication device, sending the device ID to a management device over a communications link, initiating a firmware upgrade without an administrator based on the device ID, selecting a firmware at the

management device, downloading the firmware to the communication device, and running the firmware on the communication device.

Neither Ha nor Itoh alone or in combination teach or suggest the method of claim 1. In particular, neither Ha nor Itoh teach or suggest initiating a firmware upgrade without an administrator based on the device ID as found in claim 1, but in contrast Ha discusses that “[A]a user upgrades the BIOS of the computer system using an operating system . . . by inserting a floppy disk into a floppy drive” (Col. 3, lines 42-46) and “for upgrading the BIOS, many floppy disks have to be loaded . . . and a user should input a command using a keyboard and operate it when driving the BIOS upgrade software.” (Col. 3, line 65 – Col. 4, line 2) and Itoh does not solve this problem. Itoh discusses “In this case, as an example, first, the OS switching and booting program is downloaded from the server to the computer system 10 as a binary file **when the user selects** (emphasis added) the name of an application program that the user desires to execute,” (col. 11, lines 4-8). The method of claim 1 includes reading a device ID indicating a model and revision from the communication device, sending the device ID to a management device over a communications link, and initiating a firmware upgrade *without an administrator* based on the device ID. Therefore, neither Ha nor Itoh alone or in combination teach or suggest the method of claim 1 and claim 1 should be allowed.

Claims 2-5, 7, 10, and 12 depend directly or indirectly from claim 1 and, as such, include the patentable limitations of claim 1 and should also be allowed. In addition, since the Applicant believes claims 2-5, 7, 10, and 12 are allowable for the above reasons, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claims 69-73

Claim 69, as amended, is directed to a machine-usable medium having machine-readable instructions stored thereon for execution by a processor of a telecommunications device to perform a method. The method includes initializing the telecommunication device from routines stored on a boot PROM of the telecommunications device, reading a device ID indicating a model and revision from the telecommunication device, sending the device ID to a management device over a communications link, initiating a firmware upgrade without an administrator based on the device ID, selecting a firmware for the telecommunications device at the management device, downloading the selected firmware to the telecommunication device, and running the firmware on the telecommunication device.

Neither Ha nor Itoh alone or in combination teach or suggest the method of claim 69. In particular, neither Ha nor Itoh teach or suggest initiating a firmware upgrade without an administrator based on the device ID as found in claim 69, but in contrast Ha discusses that “[A]a user upgrades the BIOS of the computer system using an operating system . . . by inserting a floppy disk into a floppy drive” (Col. 3, lines 42-46) and “for upgrading the BIOS, many floppy disks have to be loaded . . . and a user should input a command using a keyboard and operate it when driving the BIOS upgrade software.” (Col. 3, line 65 – Col. 4, line 2) and Itoh does not solve this problem. Itoh discusses “In this case, as an example, first, the OS switching and booting program is downloaded from the server to the computer system 10 as a binary file **when the user selects** (emphasis added) the name of an application program that the user desires to execute,” (col. 11, lines 4-8). The method of claim 69 includes reading a device ID indicating a model and revision from the communication device, sending the device ID to a management device over a communications link, and initiating a firmware upgrade *without an administrator* based on the device ID. Therefore, neither Ha nor Itoh alone or in combination teach or suggest the method of claim 69, and Applicant respectfully requests that claim 69 be allowed as amended.

Claims 70-73 depend directly or indirectly from claim 69 and, as such, include the patentable limitations of claim 69 and should also be allowed. In addition, since the Applicant believes claims 70-73 are allowable for the above reason. Responses to all rejections may not

have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claim 81

Claim 81, as amended, is directed to a method of operating a telecommunication device having a boot PROM, a communications interface, a device ID storage media, and a processor coupled to the boot PROM, the device ID storage media, and the communications interface. The method includes initializing the telecommunication device from routines stored on the boot PROM, reading a device ID indicating a model and revision from the telecommunication device, sending the device ID to a management device over a communications link, initiating a firmware upgrade without an administrator based on the device ID, selecting a firmware at the management device, downloading the firmware to the telecommunication device, and running the firmware on the telecommunication device.

Neither Ha nor Itoh alone or in combination teach or suggest the method of claim 81. In particular, neither Ha nor Itoh teach or suggest initiating a firmware upgrade without an administrator based on the device ID as found in claim 81, but in contrast Ha discusses that “[A]a user upgrades the BIOS of the computer system using an operating system . . . by inserting a floppy disk into a floppy drive” (Col. 3, lines 42-46) and “for upgrading the BIOS, many floppy disks have to be loaded . . . and a user should input a command using a keyboard and operate it when driving the BIOS upgrade software.” (Col. 3, line 65 – Col. 4, line 2) and Itoh does not solve this problem. Itoh discusses “In this case, as an example, first, the OS switching and booting program is downloaded from the server to the computer system 10 as a binary file **when the user selects** (emphasis added) the name of an application program that the user desires to execute,” (col. 11, lines 4-8). The method of claim 81 includes reading a device ID indicating a model and revision from the communication device, sending the device ID to a management device over a communications link, and initiating a firmware upgrade *without an administrator* based on the device ID. Therefore, neither Ha nor Itoh alone or in combination teach or suggest the method of claim 81, and Applicant respectfully requests that claim 81 be allowed as amended.

Claims 6, 8-9, 11 and 74 were rejected under 35 USC § 103(a) as being unpatentable over Ha and Itoh in view of Ishibashi et al. (U.S. Patent 6,654,820). Applicant respectfully traverses this rejection.

Claims 6, 8-9, 11

Claims 6, 8-9, and 11 depend from allowable claim 1 and, as such, include the patentable limitations of claim 1 and should also be allowed. In addition, since the Applicant believes claims 6, 8-9, and 11 are allowable for the above reason, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claim 74

Claim 74 depends from allowable claim 69 and as such includes the patentable limitations of claim 69 and should also be allowed. In addition, since the Applicant believes claim 74 is allowable for the above reason, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claim 14 was rejected under 35 USC § 103(a) as being unpatentable over Ha in view of Treu (U.S. Patent 5,245,615). Applicant respectfully traverses this rejection.

Claim 14 is dependent upon allowable claim 13 and includes the patentable limitations of claim 13. As a result, claim 14 is also allowed.

Claims 31, 49 and 66 were rejected under 35 USC § 103(a) as being unpatentable over Ha in view of Ishibashi et al. Applicant respectfully traverses this rejection. Claims 49 and 66 have been cancelled, as a result, the rejections of claims 49 and 66 are now moot.

Claim 31

Claim 31 is dependent upon allowable claim 27 and includes the patentable limitation of claim 27 and as a result is also allowable.

In addition, claim 31 further includes wherein the boot PROM and device ID are stored on a single machine readable storage medium of each of the one or more communication devices. The Examiner admits that Ha does not disclose wherein the boot PROM and device ID are stored on a single machine readable storage medium of each of the one or more communication devices. In an effort to make up for this shortcoming of Ha the Examiner cites Ishibashi. The Applicant respectfully contends that the basis for combining Ha and Ishibashi in rejecting claim 31 under 35 U.S.C. §103(a) is unfounded. The Examiner's argument that combining Ha and Ishibashi "would have been obvious to one of ordinary skill in the art" is a conclusory statement based on hindsight reasoning. In addition, the Examiner's conclusion to "modify the BIOS-ROM of Ha to include storing the device ID" because "it appears that the feature of having the device ID stored on the BIOS provides the advantage of providing fast and easy access to the device ID" reflects a hindsight view of the invention, inasmuch as the claims specifically call for the boot PROM and device ID are stored on a single machine readable storage medium of each of the one or more communication devices. Combining prior art references without the requisite suggestion, teaching, or motivation impermissibly takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight. *See, e.g., Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985). Neither Ha nor Ishibashi et al. alone or in combination teach or suggest the method of claim 31. As a result, claim 31 is allowable.

Claims 20-22, 25-26, 57-59, 61-62 and 68 were rejected under 35 USC § 103(a) as being unpatentable over Ha in view of Applicant's Admitted Prior Art (AAPA). Applicant respectfully traverses this rejection. Claims 57-59 and 61-62 and 68 have been cancelled as a result rejections to these claims are now moot.

Claim 20-22, 25-26

Claim 20 as amended is directed to a method of operating a communications rack chassis with a management card and at least one communication card. The method includes initializing the at least one communication card from routines stored on a boot PROM of the communication card, receiving a device ID from each of the at least one communications card to determine whether any of the one or more associated communication devices require a firmware upgrade, initiating a firmware upgrade without an administrator based on the device ID of each of the at least one communications card, selecting a firmware program associated with the device ID of each of the at least one associated communication card that require a firmware upgrade and downloading the firmware program associated with the device ID to each of the at least one associated communication card that requires a firmware upgrade.

Ha does not teach or suggest the method of claim 20. Applicant refers the Examiner to the arguments presented above with respect to claims 13 and 29. As a result, claim 20 is also allowable.

Claim 23 was rejected under 35 USC § 103(a) as being unpatentable over Ha and AAPA in further view of Itoh. Applicant respectfully traverses this rejection.

Claim 24 was rejected under 35 USC § 103(a) as being unpatentable over Ha and AAPA in further view of Ishibashi. Applicant respectfully traverses this rejection.

Claims 21 - 26 depend either directly or indirectly from allowable claim 20 and as such are also allowable. In addition, since the Applicant believes claims 21, 22, 25, and 26 are allowable for the above reason, responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

Claims 34-37 and 39-40 were rejected under 35 USC § 103(a) as being unpatentable over Ha in further view of Itoh and Comer. Claim 34 has been amended to include further definition of the method and should be allowed. Claims 35-37 and 39-40 are dependent from claim 34 and

should also be allowed. As a result, Applicant respectfully asserts that claims 34-37 and 39-40 should be allowed.

Claims 34, 35-37, 39-40

Claim 34, as amended, is directed to a method of operating an asymmetric digital subscriber line (ADSL) communication device with a boot PROM. This method includes initializing the ADSL communication device from routines stored on the boot PROM, reading a device ID indicating a model and revision from the ADSL communication device, sending the device ID to a management device over a communications link, initiating a firmware upgrade without an administrator based on the device ID, selecting a firmware for the communication device at the management device, downloading the firmware to the ADSL communication device, and running the firmware on the ADSL communication device.

Neither Ha nor Itoh alone or in combination teach or suggest the method of claim 34. In particular, neither Ha nor Itoh teach or suggest initiating a firmware upgrade without an administrator based on the device ID as found in claim 34, but in contrast Ha discusses that “[A]a user upgrades the BIOS of the computer system using an operating system . . . by inserting a floppy disk into a floppy drive” (Col. 3, lines 42-46) and “for upgrading the BIOS, many floppy disks have to be loaded . . . and a user should input a command using a keyboard and operate it when driving the BIOS upgrade software.” (Col. 3, line 65 – Col. 4, line 2) and Itoh does not solve this problem. Itoh discusses “In this case, as an example, first, the OS switching and booting program is downloaded from the server to the computer system 10 as a binary file **when the user selects** (emphasis added) the name of an application program that the user desires to execute,” (col. 11, lines 4-8). The method of claim 34 includes reading a device ID indicating a model and revision from the ADSL communication device, sending the device ID to a management device over a communications link, and initiating a firmware upgrade *without an administrator* based on the device ID. Therefore, neither Ha nor Itoh alone or in combination teach or suggest the method of claim 34. As a result, claim 34 is allowable.

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Claim 38 was rejected under 35 USC § 103(a) as being unpatentable over Ha, Itoh, Comer in further view of Ishibashi. Applicant respectfully traverses this rejection.

Claims 35-40 depend directly from allowable claim 34 and, as such, include the patentable limitations of claim 34 and should also be allowed. In addition, since the Applicant believes claims 35-40 are allowable for the above reasons. Responses to all rejections may not have been put forth in this response. The Applicant, however, retains the right to respond to said rejections if a further response is required.

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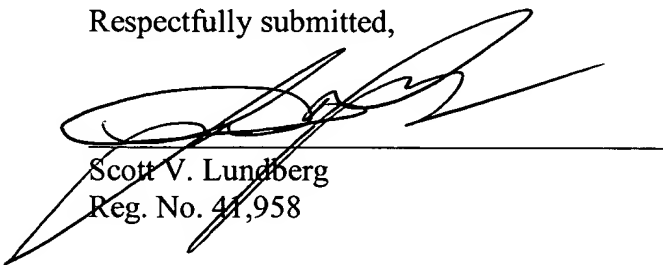
CONCLUSION

Applicant respectfully submits that claims 1-40 and 69-81 are in condition for allowance and notification to that effect is earnestly requested. If necessary, please charge any additional fees or credit overpayments to Deposit Account No. 502432.

If the Examiner has any questions or concerns regarding this application, please contact the undersigned at 612-455-1685.

Respectfully submitted,

Date: 6-22-05



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Attachments: Replacement sheet of Figure 2A and new Figure 3
 Annotated sheet showing changes to Figure 2A



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Annotated Sheet

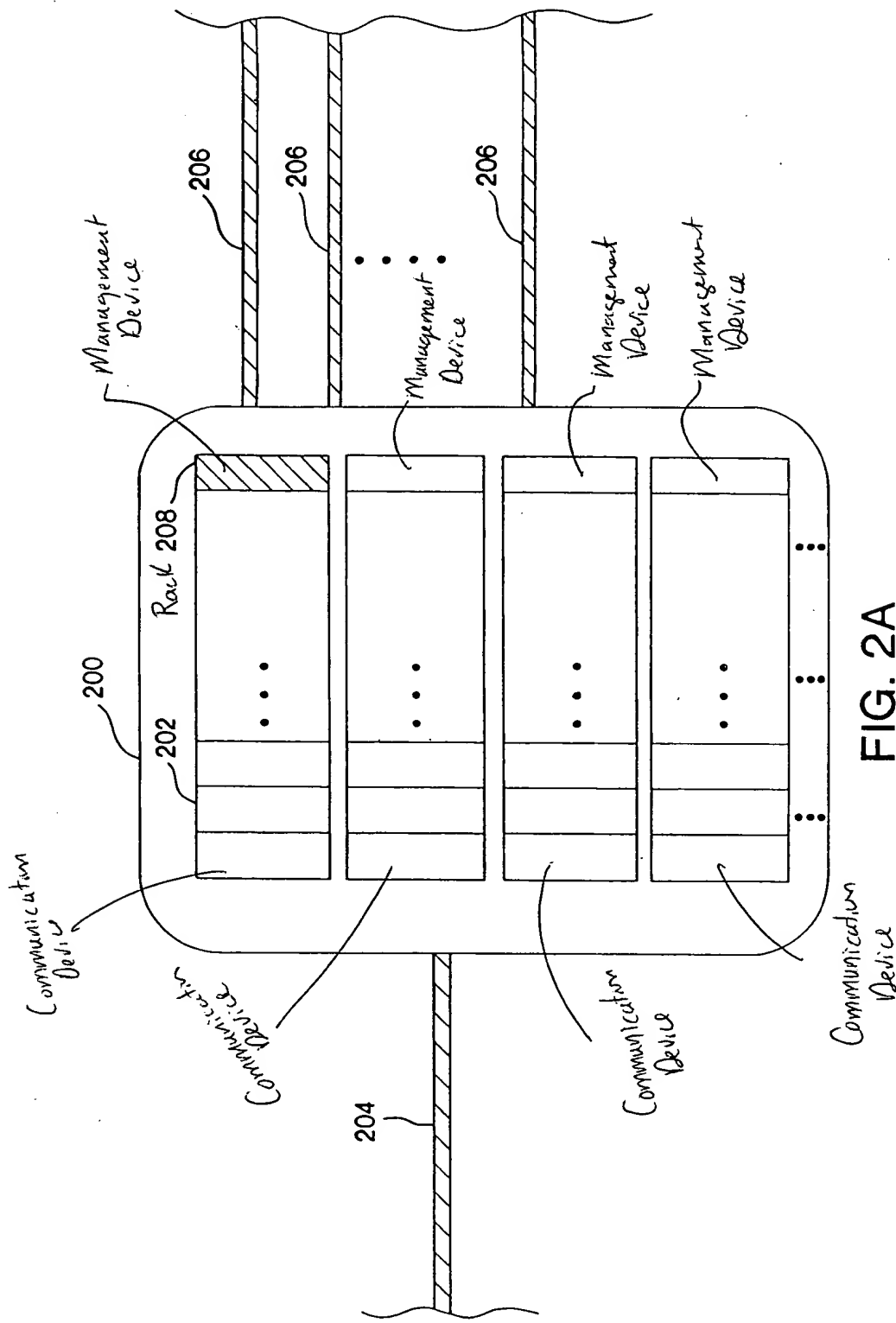


FIG. 2A